



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Kenneth T. Cuccinelli II
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

June 16, 2011

MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Special Counsel to DMAS

DATE: June 16, 2011

SUBJECT: Emergency Regulations – Pilot Program Enrolling Foster Care Children in Medallion II

I have reviewed the attached emergency regulations that would implement one of the options set forth in the 2011 Appropriations Act relating to expansion of care coordination. The specific option addressed by the attached emergency regulations is the implementation of a pilot program enrolling in Medallion II approximately 300 eligible foster care children in the custody of the City of Richmond Department of Social Services. The Department of Medical Assistance Services (“DMAS”) reports that it has realized numerous health care and budgetary benefits from covering traditional acute care services through a risk-based, capitated managed care program.

Based on my review, it is this Office’s view that the Director of the Department of Medical Assistance Services (“DMAS”), acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act (“APA”) and has not exceeded that authority.

The authority for this emergency action is found in Virginia Code § 2.2-4011(B), which provides that emergency regulations may be adopted in “situations in which Virginia statutory law, the [Virginia] appropriation act, or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment . . .” The attached emergency regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2011 *Acts of Assembly* Item 297 MMM.1, specifically, option (b) of this Item.

Please be advised that under Virginia Code §2.2-4011(B), the Department must state in writing “the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations.” The Department’s statement of the nature of the emergency and necessity for such action appears to have been accomplished in the “Agency Background Document.” In addition, the emergency regulations shall be effective for no more than 12 months. If the Department intends to continue regulating the subject matter governed by these emergency regulations beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Register within 60 days of the effective date of the emergency regulations. The proposed regulations must be filed with the Register within 180 days after the effective date of the emergency regulations. Va. Code § 2.2-4011(C).

If you have any questions or need any additional information, please feel free to contact me at 786-4905.

cc: Kim F. Piner
Senior Assistant Attorney General